



THE ATTORNEY GENERAL OF TEXAS

GROVER SELLERS
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ATTORNEY GENERAL

AUSTIN 11, TEXAS

Honorable Nelson Creeman, Secretary
Texas State Board of Examiners in Optometry
Majestic Building
San Antonio, Texas

Dear Sir:

Opinion No. O-6552

Re: Under the facts stated, the Board is not authorized to accept the application of a person for examination for license to practice optometry in the state of Texas.

Your recent letter requests this department's opinion as to whether or not the Texas State Board of Examiners in Optometry is authorized to permit an applicant to take an examination in this State under the following fact situation. The applicant enrolled in a school for optometry in September 1922, graduated from said school in June 1924; at that time he was not a resident of the state of Texas and has not been in the actual practice of optometry since his graduation in 1924 from the school of optometry. Applicant is now a resident of Texas and on December 8, 1944, while a resident of Dallas, Texas, he obtained a license to practice optometry in the State of Nebraska; but has not been in actual practice in that or this State. This, we believe, briefly summarizes the facts stated in your letter, as well as the exhibits attached thereto, requesting this department's opinion on the facts stated.

The applicant graduated from the Needles Institute of Optometry in June 1924, and at that time under the then statutes of the State of Texas he would have been eligible to take the examination.

The 37th Legislature, 1921, First Called Session, Chapter 51, page 159, passed an Act defining and regulating the practice of optometry in Texas and created a board of

Honorable Nelson Creeman, Secretary, page 2 O-6552

examiners. The Codifiers of the Revised Civil Statutes of Texas, 1925, placed the 1921 Act in Chapter 10 of Title 71 of the Revised Civil Statutes of 1925, same being Articles 4552-4566, inclusive, of the Revised Statutes of 1925.

That part of the 1921 Act pertinent to your inquiry, being the quoted portion of Section 11 of said Act, is as follows:

"Sec. 11. Every person desiring to begin the practice of optometry after the passage of this Act shall make application for license by presenting to the secretary of the Board, on blank forms furnished by the Board, satisfactory evidence, verified by oath, that he or she has attained the age of twenty-one years, is of good moral character, has the necessary preliminary education and has graduated from a school of optometry maintaining a standard which meets with the requirements of said Board, or has studied optometry in Texas not less than two years in the office of an optometrist licensed under this Act, before taking the examination which shall be prescribed by the Board. . . . the Board shall have authority, at its discretion, to recognize the license which has been issued, after full examination, by State Board of Examiners in Optometry of other states having a standard of education in optometry satisfactory to the Texas State Board of Examiners in Optometry and may issue to such persons a license to practice optometry in Texas, or in its discretion, may admit for full examination any person presenting an unrevoked certificate of examination from the Board of Examiners of any other State.

". . ." (Emphasis ours)

The above quoted parts of Section 11 were brought forward into the Revised Civil Statutes of 1925 as Articles 4557 and 4560.

Article 4557 of the original 1925 codification is as follows:

"Art. 4557. Application for license.---Whoever desires to begin the practice of optometry shall

make application for license by presenting to the secretary of the board, on forms furnished by the board, satisfactory sworn evidence that he or she has attained the age of twenty-one years, is of good moral character and has graduated from a school of optometry maintaining a standard which meets with the requirements of said board, or has studied optometry in Texas not less than two years in the office of an optometrist licensed under this law before taking the examination which shall be prescribed by the board." (Emphasis ours)

Article 4560 of the original codification of 1925 is as follows:

"Art. 4560. Reciprocity. -- The board shall have authority, at its discretion, to recognize the license which has been issued, after full examination, by State Board of Examiners in Optometry of other states having a standard satisfactory to the Texas State Board of Examiners in Optometry and may issue to such persons a license to practice optometry in Texas, or in its discretion, may admit for full examination any person presenting an unrevoked certificate of examination from the Board of Examiners of any other state."

In 1939, Acts of the 46th Legislature, page 360, Article 4557 was amended so that it read as follows:

"Every person desiring to practice optometry in the State of Texas shall be required to pass the examination given by the Texas State Board of Examiners in Optometry. The applicant shall make application by presenting to the Secretary of the Board, on forms furnished by the Board, satisfactory sworn evidence that he has attained the age of twenty-one (21) years, is of good moral character, is a citizen of the United States, and has at least graduated from a first grade high school or has a preliminary education equivalent thereto permitting matriculation in the University of Texas, and that he has attended and graduated from a reputable university or college of optometry and which meets with the requirements of the Board, or has studied

optometry not less than four consecutive calendar years in the office of an optometrist licensed under this Act. and has the preliminary high school education provided for in this section, before beginning his studies, and provided that any person desiring to qualify in this manner shall file with the Board on blanks prescribed and furnished by the Board satisfactory proof, upon the beginning of his studies, as aforesaid, within thirty (30) days thereof, and full and complete satisfactory proof upon the completion of his studies within thirty (30) days thereof.

"A university or school of optometry is reputable whose entrance requirements and course of instruction are as high as those adopted by the better class of universities and schools of optometry and whose course of instruction shall be the equivalent of not less than four (4) terms of eight (8) months each and approved by the Board." (Emphasis ours)

And the same 1939 Act also repealed the reciprocity provision of Article 4560 so that now in Texas we do not have any optometry reciprocity with other states.

Article 4559 with reference to the conduct of examinations, notice, registration etc. was also amended by the 1939 Act by adding thereto the following paragraph:

". . .

"Provided that no provision of this section shall apply to any qualified person who in good faith began the study of optometry under the provisions of Chapter 51, Acts of the Thirty-seventh Legislature, First Called Session, prior to the effective date of this Act, and who shall, within thirty (30) days after such effective date, register with the Secretary of the Board, under proper rules of the Board, satisfactory proof of the beginning of such study, together with such other related facts as the Board may require. Any person failing to register with the secretary to the Board as herein provided shall be deemed to have waived all rights under the provisions of Chapter

Honorable Nelson Creeman, Secretary, page 5 O-6552

51, Acts Thirty-seventh Legislature, First Called Session. Acts 1st C.S. 1921, p. 159; Acts 1939, 46th Leg., p. 360, S. 6." (Emphasis ours)

The same Legislature, 46th Legislature, H. C. R. No. 212 found on page 849 of the Acts of the 46th Legislature passed a concurrent resolution stating that the first sentence of the above quoted paragraph which reads "Provided that no provision of this section" should have read "Provided that no provision of this Act."

It cannot be questioned but that the State has the power to set standards or qualifications and impose reasonable restrictions upon those seeking to practice a profession and that these standards or qualifications can be changed from time to time. This inherent power of the State exists in order to determine the competency or capacity of persons seeking to engage in professions or callings or those vocations vitally related to the conserving of the public welfare and the public safety. It is manifest that the Legislature intended to raise the requirements and qualifications of optometrists and that it amended the statutes by substituting the period of required study from two to four years; and since the applicant did not preserve his rights in the matter his attempt to do so now comes too late.

It is our opinion that since the person named in your communication has failed to comply with Article 4559 as amended, his application now comes too late and he, therefore, is prohibited from taking the examination.

Trusting that the foregoing fully answers your inquiry, we are

Yours very truly

ATTORNEY GENERAL OF TEXAS

By David Wuntch
Assistant

DW:mp/PAM

APPROVED MAY 23, 1945
GROVER SELLERS
ATTORNEY GENERAL OF TEXAS

APPROVED OPINION COMMITTEE
BY GRM, CHAIRMAN